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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,880	07/03/2001	Thomas James Klofta	8622	2203

27752 7590 08/11/2004

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EXAMINER

GEORGE, KONATA M

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20040324

Application Number: 09/898,880  
Filing Date: July 03, 2001  
Appellant(s): KLOFTA ET AL.

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Eric T. Addington  
Reg. No. 52,403  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 20, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 20-25 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

### **(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

5-1997

Wenninger, John A., McEwen, Jr., G.N. "International Cosmetic Ingredient Dictionary and Handbook" Seventh Edition, 1997, vol. 1 pp. 26-27, vol. 2 pp. 1067-1068.

### **(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,609,587) in view of Wenninger et al. (*International Cosmetic Ingredient Dictionary and Handbook* 1997).

Roe discloses a diaper having a lotioned topsheet comprising a liquid polyol polyester emollient and an immobilizing agent. The disposable absorbent article of the prior art can be sanitary napkins, panti-liners, diapers, incontinence briefs, etc. (col. 4, lines 34-37). The lotion composition comprises (1) a liquid polyol polyester emollient; (2) an immobilizing agent(s) for the liquid polyol polyester emollient; (3) optionally a

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hydrophilic surfactant; and (4) other optional components (col. 10, lines 38-42). The skin-conditioning agent of the claimed invention is the polyol polyester of the prior art (col. 10, lines 56-67 to col. 15, lines 1-20). The viscosity agent of the claimed invention is the immobilizing agent (i.e. C<sub>12</sub>-C<sub>22</sub> fatty acids) (col. 18, lines 45-62) or waxes (col. 21, lines 18-25). Within the optional components we find vitamins, skin soothing agents (i.e. applicants claimed skin care ingredients) and film-forming agents (col. 23, lines 27-44). Column 15, lines 49-64 describe that petroleum-based emollients can be employed in the composition. The prior art does not teach the specific film-forming agents as claimed.

Wenninger discloses in Volume 1 pages 26-27 the use of acrylates copolymers as film formers. It is also taught in volume 2, pages 1067-1068 the use of polyethylene as a film-forming agent.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the acrylates copolymers and polyethylene of Wenninger in the invention of Roe. Column 23, lines 41-44, state "all of these materials are well known in the art as additives for such formulations and can be employed in appropriate amounts in the lotion compositions of the present invention." Thus it is obvious to combine.

#### **(11) Response to Argument**

Applicants argue that the composition of the prior art contains a hydrophilic surfactant to increase wettability of the lotion. Applicants argue that the prior art

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teaches that the use of a C<sub>16</sub>-C<sub>18</sub> fatty alcohol requires a hydrophilic surfactant. Column 21, lines 49-53 of the prior art teaches that if one was to use a different immobilizing agent, then it may be unnecessary to employ a hydrophilic surfactant to the lotion to improve wettability. Note, the claims are not limited to the use of C<sub>16</sub>-C<sub>18</sub> fatty alcohol.

Applicants argue that the composition of the prior art is not resistant to water, wash-off and rub-off. It is the position of the examiner that the composition is resistant to water, wash-off and rub-off. Page 1, lines 34-36 of the applicants' specification teaches that the composition has a good affinity to the skin and resists rub-off by clothing and other contacting surfaces. Column 10, lines 23-29 of Roe teach that the lotion composition adheres to the skin of the user to reduce the adherence of BM to the skin of the user. Therefore, the composition of Roe is resistant to water, wash-off and rub-off.

Applicants argue that the prior art does not teach the claimed film-forming agents. It is the position of the examiner that the selection of a known material based on its suitability for its intended use is obvious absent a clear showing of unexpected results attributable to the applicants' specific selection. Furthermore, column 23, lines 41-44 teach that all of the materials are well known in the art as additives for such formulations and can be employed in appropriate amounts in the lotion compositions of the present invention.

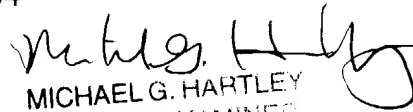
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For the above reasons, it is believed that the rejections should be sustained.

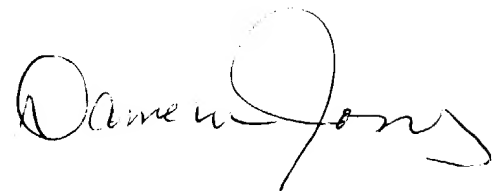
Respectfully submitted,

Konata M. George  
August 5, 2004


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